

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Applicant:	§	
Oleg B. Rashkovskiy	§	Art Unit: 2424
	§	
Serial No.: 09/690,549	§	Examiner: Rueben M. Brown
	§	
Filed: October 17, 2000	§	Conf. No.: 2613
	§	
For: Storing Advertisements	§	Atty Docket: BKA.0006US
	§	
	§	

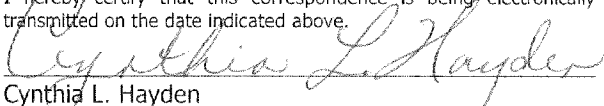
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REPLY BRIEF

The Answer ignores limitations in the claims. For example, with respect to update instructions, the Answer focuses entirely on the first clause which calls for a receiver to receive content, an advertisement, and update instructions for said advertisement. Nowhere does the Answer ever point out anywhere where update instructions are provided. This is because Jernigan is completely silent on the point. He simply states that updates may be stored in the PROM 28.

To try to finesse this problem, the Answer points out that the reference talks about using the microcontroller 16 to handle the advertisements stored in the ROM 12. But Jernigan is explicit that the ROM 12 only holds the original advertisements and it is the PROM 28 that stores the updates. See column 3, lines 19-30. There is no discussion about how the PROM is read or utilized. This fundamental problem is effectively glossed over in the Answer but is sufficient basis in and of itself for reversal. It is exactly the same problem that caused reversal before.

Moreover, the Answer ignores the rest of the claim which states that said receiver to receive an update for said advertisement "and to automatically replace said advertisement with

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said update using said instructions." Not only is there no discussion in Jernigan of instructions for updating, there is no teaching of automatic updating of advertisements using those instructions -- again, the exact same problem that necessitated reversal by the Board of the prior rejection.

The Answer, on page 11, first full paragraph, indicates that the claim is broad enough to read on the TV receiver receiving update instructions from local memory. However, it is stated that the receiver must "receive" the update instructions and, therefore, the claim cannot cover transferring instructions internally, as is the case in Jernigan.

Further, in that same paragraph, the Answer suggests that the microcontroller 16 "determines when and which one of the various advertisements are to be displayed." But this is a cropped quote and leaves out the rest of the language in the cited passage, which indicates that the microcontroller only means this determination with respect to the memory 12:

This ROM 12 is connected by a data bus 14 to a microcontroller 16, which, in conjunction with a program stored in program memory coupled thereto by the data bus 14, determines when and which one of the various advertisements are to be displayed.

See column 2, lines 48-52. However, the specification is explicit that the updates are stored in the PROM 28, not the ROM 12. See column 3, lines 19-30. Thus, the proffered operation is merely an attempt to finesse the lack of any teaching in the reference, which lack of teaching is fatal to the rejection.

The final paragraph on page 11 concludes that since the instructions in Jernigan are in the ROM, whenever the ROM is attached to the receiver the receiver would have, at least at that time, receive the update instructions, is, of course, based on an entirely incorrect understanding of the reference. There are no instructions in the ROM 12. The ROM stores the advertisements. The instructions for those advertisements only are elsewhere, namely, in the program memory 18. Thus, the analysis makes no sense.

In the third paragraph at page 12, the Answer postulates that even if Jernigan merely plugs ads in periodically, as asserted by Appellant, the specifics of when and where to periodically plug them in is determined and executed by the microcontroller. But Jernigan does not plug the advertisements in. Jernigan overlays the advertisements, as clearly shown in Figures 2a-2c. Therefore, he never finds a place to insert the advertisement in the cache content. He

does not have to because the normal advertisements are simply overlaid. There is no explanation for how the updates are displayed or used.

Thus, not only does Jernigan fail to teach a receiver to receive update instructions, but he also fails to teach the claimed shell or the receiver to automatically replace said advertisement with the update.

We simply do not know, as the Answer apparently recognizes at page 12, last four lines, what is done with the update instructions because there is absolutely no teaching. While the Answer contends that the applicant has proposed how this might be done, nonetheless, the Examiner and appellant are agreed that the reference simply does not teach how it is done. This is indeed a problem for the rejection, not the appeal.

With respect to the application of KSR, the Answer relies on what is called factors 3 and 4. End content is nowhere suggested in any reference. Thus, the Examiner's attempted application of KSR, belated though it may be, is too little, too late.

Finally, the basis for the Section 112 rejection remains unclear. The Answer contends that it is a written description requirement problem. But all the Answer says is neither the specification or the claims "included the terms of cache or shell." As pointed out in the appeal brief, there is no requirement that the same terms be used. The rejection does state that the specification does not support a cache coupled to the receiver. The receiver in this case is clearly the television 20, shown in Figure 1. The cache is plainly the system memory 8 shown in Figure 1. The only possible cache shown in Figure 1 is the system memory 8 and the only possible receiver shown in Figure 1 is the television 20 or the tuner card 24. Anyone skilled in the art would understand that an antenna 26 and tuner card 24 may be a receiver or the television 20 may be called the receiver and that a cache would have to be a memory, such as a system memory that can be written to or read from.

With respect to claim 51's requirement of a receiver to receive content interrupted with said advertisement, said receiver to determine whether said advertisement was previously stored, it is not clear what the Answer means by the claim requiring an interruption. The claim states that the content must be interrupted with the advertisement, but, of course, any content would have to be interrupted by an advertisement. As the Board pointed out in its previous decision, the specification uses the content collectively to be programming and commercials. Thus, when the programming stops and the commercial begins, the commercial is interrupted. The concept

of the invention is that the commercials are inserted into the content and, therefore, the content must be interrupted to play the commercial. For example, the specification at page 5, lines 14-16, explains that a marker may be inserted into the content record in order to "identify the location to insert a commercial." Anyone skilled in the art would understand that when a commercial is inserted into programming content, the programming content is thereby interrupted.

Therefore, the Section 112 rejections are reversible.

Respectfully submitted,

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